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Attorneys for Plaintiffs,
UMG RECORDINGS, INC.; SONY BMG
MUSIC ENTERTAINMENT; ARISTA
RECORDS LLC; ELEKTRA
ENTERTAINMENT GROUP INC.;
CAPITOL RECORDS, INC.; and BMG
MUSIC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UMG RECORDINGS, INC., a Delaware
corporation; SONY BMG MUSIC
ENTERTAINMENT, a Delaware general
partnership; ARISTA RECORDS LLC, a
Delaware limited liability company; ELEKTRA
ENTERTAINMENT GROUP INC., a Delaware
corporation; CAPITOL RECORDS, INC., a
Delaware corporation; and BMG MUSIC, a New
York general partnership,
Plaintiffs,

v.

JOHN DOE #1,
Defendant.

CASE NO. 3:07-CV-04835-JCS

Honorable Joseph C. Spero

**EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER**

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
2 and 6(b)(1)(A), that the Court grant an additional 90 days to serve Defendant with the Summons and
3 Complaint. As further explained below, while Plaintiffs believe they have discovered the “John
4 Doe” defendant’s true identity, they have so far refrained from filing a First Amended Complaint
5 naming her as an individual defendant to allow time to attempt settlement, and Plaintiffs request
6 additional time to effectuate service once the First Amended Complaint is filed. In support of their
7 request, Plaintiffs state as follows:

8 1. The current deadline for service of process is January 18, 2008. The initial
9 case management conference is set for April 4, 2008, at 1:30 p.m., as continued by the Court’s Order
10 of December 21, 2007 upon Plaintiffs’ request.

11 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant
12 John Doe #1 (“Defendant”) on September 20, 2007. Plaintiffs did not have sufficient identifying
13 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet
14 Protocol address assigned to Defendant by Defendant’s Internet Service Provider (“ISP”) – here,
15 Santa Clara University.

16 3. In order to determine Defendant’s true name and identity, Plaintiffs filed their
17 *Ex Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting
18 that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

19 4. The Court entered an Order for Leave to take Immediate Discovery on
20 October 3, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On
21 November 16, 2007, the ISP responded to Plaintiffs’ subpoena, providing Plaintiffs with identifying
22 information including Defendant’s name, telephone number, and address.

23 5. On November 28, 2007, Plaintiffs sent a letter to Defendant notifying her of
24 their claims, and later followed up with telephone messages and e-mail. Defendant has not
25 responded to these attempts to contact her. Accordingly, Plaintiffs have prepared a First Amended
26 Complaint naming Defendant individually, which will be filed within the week (unless Defendant
27 contacts Plaintiffs and the dispute is resolved).
28

1 6. Given the circumstances of this case, Plaintiffs respectfully request an
2 additional 90 days to effectuate service.

3 7. Plaintiffs submit that their efforts to give written notice to Defendant of their
4 claim and subsequent efforts to contact Defendant and resolve the case without further litigation
5 constitute "good cause" under Rule 4(m) for any delay in effectuating service. *See Ritts v. Dealers*
6 *Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good cause standard for
7 service extensions). This Court has discretion to enlarge the time to serve even where there is no
8 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996). Here, Plaintiffs acted
9 in good faith to try to settle this matter with Defendant without potentially damaging her credit by
10 naming her in the suit as well as attempting to avoid the cost of further litigation for both parties.
11 Moreover, unlike a traditional case in which the defendant is known by name and efforts to serve can
12 begin immediately after filing the complaint, in this case Plaintiffs first had to obtain the identity of
13 the defendant through the subpoena to the ISP
14

15 8. Because the copyright infringements here occurred in 2007, the three-year
16 limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus
17 be no prejudice to the Defendant from any delay in serving the Complaint.

18 9. Plaintiffs will provide the Defendant with a copy of this request and any Order
19 concerning this request when service of process occurs.
20

21 Dated: January 15, 2008

HOLME ROBERTS & OWEN LLP

22
23 By: /s/ Matthew Franklin Jaksa
24 MATTHEW FRANKLIN JAKSA
25 Attorney for Plaintiffs
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27
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ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to April 17, 2008.

Dated: January 16, 2008

By: _____

